THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO. 26144 OF 1995

DATED: 28-11-2006

BETWEEN:

T. Sudhakar, S/o. T. Venkataswamy
And two others

… Petitioners

and

Government of Andhra Pradesh,
Rep. By its Secretary to Government
And three others

… Respondents

THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO. 26144 OF 1995

ORDER:

This writ petition is filed seeking a writ of Mandamus to declare G.O.Ms.No.466, Food and Civil Supplies (III) Department, dated 07-11-1995 in so far as the direction to regularize the petitioners as attenders instead of junior assistants, is concerned, as illegal, unconstitutional and violation of Articles 14, 16 and 21 of the Constitution of India and for a consequential direction to regularize the petitioners' services as Junior Assistants with effect from 22-06-1989 on par with the similarly situated persons of second respondent Corporation.

In the affidavit filed in support of the writ petition, the petitioners averred that they were appointed as bill writers in Annapurna Canteen run by the third respondent corporation on 04-11-1981, 4-10-1981 and 24-11-1981 respectively. Initially, they were paid with consolidated amount of Rs.260/- per month, which was later enhanced to Rs.350/-. At the time of filing of the writ petition,

they were paid a sum of Rs.810/- per month as consolidated pay. The State Government issued G.O.Ms.No.694, dated 01-10-1981 merging the third respondent Corporation with the second respondent Corporation with effect from 01-11-1991 and all the employees working under the third respondent Corporation were transferred to the second respondent Corporation. The state Government also issued G.O.Ms.No.448 dated 16-06-1989 regularizing 35 persons in the post of Junior Assistants (Assistants Grade-III). There were number of employees, who got the benefit under the said G.O. though they have passed 10th Class and Intermediate and the similar benefit has been denied to the petitioners on the ground that they are canteen employees and that their cases will be dealt with separately.

The first respondent issued the impugned G.O.Ms.No.466, Food & Civil Supplies(III) Department dated 07-11-1995 where under the services of 24 temporary employees were regularized in the posts of Assistant Grade III and all of them had either matriculation or intermediate qualifications. However, by the said G.O. the petitioners' services were regularized only as attenders. By the action of the first respondent in not regularizing the petitioners' services as Assistants Grade III, the present writ petition is filed. The petitioners' grievance is that though they were similarly situated as that of the 24 persons, whose services were regularized as Assistants Grade III, but the said benefit has not been given to them.

Sri Bhaskara Reddy, learned counsel for the petitioners submitted that the petitioners are similarly placed to the said 24 persons, who were appointed as Assistants Grade III, though they had either intermediate or metriculation qualification and hence the action of the respondents 1 and 2 in not appointing the petitioners as Assistants Grade III is discriminatory and in violation of Articles 14 of the Constitution of India.

Sri V.T.M. Prasad, learned standing counsel submitted that the petitioners earlier filed W.P.No.15847 of 1990 along with some other

persons and the same was disposed off by this Court on 31-01-1995 with a direction that their cases for regularization shall be considered in accordance with G.O.Ms.No.212 dated 22-12-1994. He further submits that one of the requirements stipulated in G.O.Ms.No.212, is that a candidate shall possess the educational qualifications required for being appointed in the post in which they seek regularization. He submits that for the post of Assistant-Grade III, graduation is the required qualification and since the petitioners do not hold the said qualification, they were appointed as attenders.

As regards the third petitioner, the submission of the learned standing counsel appears to hold good, since he is a party to the writ petition, which, as afore mentioned, was disposed of with a direction that his case shall be considered in accordance with G.O.Ms.No.212 dated 22-12-1994. The learned counsel for the petitioners does not dispute that according to G.O.Ms.No.212,

a candidate seeking regularization shall possess the educational qualifications required for the relevant post. He also does not dispute that the educational qualification prescribed for the post of Assistant-Grade III is graduation. Since the third petitioner does not possess the said qualification, he is not entitled for appointment as Assistant-Grade III.

As regards petitioner No.1, it is not in dispute that he was neither a party to W.P.No.15847/90 nor he has filed any other writ petition earlier. Learned counsel for the petitioners says that the directions given by this Court in W.P.No.15847/90 do not bind the first petitioner. His contention is that G.O.Ms.No.466 under which the services of 24 persons were regularized, does not stipulate the qualification of graduation for the candidates to be appointed as Assistants, Grade III and therefore, the second respondent has not insisted on the qualification of graduation in respect of 24 employees and while regularizing their services as Assistants-Grade III, there is no justification to insist on the first petitioner to possess the said

qualification in terms of G.O.Ms.No.212.

I see force in the contention of the learned counsel for the petitioners. A reading of G.O.Ms.No.448 dated 16-06-1989 shows that the persons who are to be appointed shall fulfill the qualification prescribed for the post and that in case where they do not fulfill the qualifications required, they shall acquire the said qualification within a period of two years from the date of issue of the order of regularization and in case they failed to acquire the said qualification with in the stipulated period, they shall not be eligible for future promotion.

A counter affidavit filed on behalf of the respondents does not give any satisfactory reason as to why the petitioners' cases have not been considered under G.O.Ms.No.448.

Except saying that the said G.O. was super-seeded by G.O.Ms.No.212, it is not known as to whether the petitioners cases have been considered along with the said 24 persons under G.O.Ms.No.448, where under their cases for appointment to the post of Assistants, Grade III were rejected on the ground that they do not hold the qualification of graduation. While G.O.Ms.No.448 was issued in the year 1989, G.O.Ms.No.212 was issued in the year 1994. There was thus a time gap of about five years between two G.Os. But, no reasons are assigned for the inordinate delay on the part of the second respondent in considering the case of the petitioners, when the petitioners would be entitled to the similar benefit as that of those 24 persons, whose services were regularized under G.O.Ms.No.448, dated 16-06-1989.

In view of the fact that petitioner No.3 has already filed a writ petition as aforesaid, which was disposed of with a direction to the effect that his case will be considered in terms of G.O.Ms.No.212, no relief can be granted to him in the present writ petition, since his case was considered under G.O.Ms.No.212 under which he was required to possess graduation as qualification.

However, the 1st petitioner being not a party to the said writ

petition, in my view, is justified in seeking the relief, which was granted to 24 other persons by the second respondent Corporation itself by regularizing their services, though they do not have the graduation qualification. Propriety and fairness require,

similar benefit, which was given to the said 24 persons, shall also be extended to the first petitioner.

In view of the same, the writ petition is allowed to the extent of the first petitioner only directing respondents 1 and 2 to extend the benefit of G.O.Ms.No.448 dated 16-06-1989 to him by appointing him as Assistant, Grade III with effect from the date on which 24 persons were appointed as Assistants, Grade III under G.O.Ms.No.448 dated 16-06-1989 and extend him all the attendant benefits attached to the said post of Assistant, Grade III.

With regard to the petitioner No.3 he did not possess graduation qualification and he is bound by the order in W.P.No.15847/90 in terms of which he was appointed as attender and that since admittedly he does not have the qualification of graduation, he is not entitled to any relief in this writ petition. However, I am told that in view of the interim orders granted in this Writ Petition, he is being continued as Assistant-Grade III even though he does not have the qualification of graduation. Therefore, the respondents are directed to consider his case for continuation in that post keeping in view the fact that he is being continued in the said post since 1981.

Learned counsel for the petitioners says that the 2nd petitioner died and the writ petition gets abated to the extent of petitioner No.2. Hence no relief can be granted to the second petitioner. No order as to costs.

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C.V. NAGARJUNA REDDY, J.

Dt: 28-11-2006
Rns.